

Title 29

Probate

TITLE 29. PROBATE

IC 29-1-1-3

Definitions; rules of construction

Sec. 3. (a) The following definitions apply throughout this article, unless otherwise apparent from the context:

- (1) "Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in IC 29-1-2-5, a child born out of wedlock.
- (2) "Claims" includes liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, and all taxes imposed by reason of the person's death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.
- (3) "Court" means the court having probate jurisdiction.
- (4) "Decedent" means one who dies testate or intestate.
- (5) "Devise" or "legacy", when used as a noun, means a testamentary disposition of either real or personal property or both.
- (6) "Devise", when used as a verb, means to dispose of either real or personal property or both by will.
- (7) "Devisee" includes legatee, and "legatee" includes devisee.
- (8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.
- (9) "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.
- (10) "Fiduciary" includes a:
 - (A) personal representative;
 - (B) guardian;
 - (C) conservator;
 - (D) trustee; and
 - (E) person designated in a protective order to act on behalf of a protected person.
- (11) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.
- (12) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
- (13) "Interested persons" means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.
- (14) "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.
- (15) "Lease" includes an oil and gas lease or other mineral lease.
- (16) "Letters" includes letters testamentary, letters of administration, and letters of guardianship.
- (17) "Minor" or "minor child" or "minority" refers to any person under the age of eighteen (18) years.
- (18) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.
- (19) "Net estate" refers to the real and personal property of a decedent less the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.
- (20) "Person" includes natural persons and corporations.
- (21) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.
- (22) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.
- (23) "Property" includes both real and personal property.
- (24) "Protected person" has the meaning set forth in IC 29-3-1-13.
- (25) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

(26) "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

(Formerly: Acts 1953, c.112, s.103; Acts 1973, P.L.287, SEC.1.) As amended by Acts 1979, P.L.268, SEC.1; P.L.146-1984, SEC.1; P.L.152-1987, SEC.8; P.L.33-1989, SEC.31; P.L.254-1997(ss), SEC.28; P.L.176-2003, SEC.2.

IC 29-1-8

Chapter 8. Dispensing With Administration

IC 29-1-8-1

Sec. 1. (a) Forty-five (45) days after the death of a decedent and upon being presented an affidavit that complies with subsection (b), a person:

(1) indebted to the decedent; or

(2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent.

(b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the claimant stating that:

(1) the value of the gross probate estate, wherever located (less liens and encumbrances), does not exceed twenty-five thousand dollars (\$25,000);

(2) forty-five (45) days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claimant is entitled to payment or delivery of the property.

(c) If a motor vehicle or watercraft (as defined in IC 9-13-2-198.5) is part of the estate, nothing in this section shall prohibit a transfer of the certificate of title to the motor vehicle if five (5) days have elapsed since the death of the decedent and no appointment of a personal representative is contemplated. A transfer under this subsection shall be made by the bureau of motor vehicles upon receipt of an affidavit containing a statement of the conditions required by subsection (b)(1) and (b)(4). The affidavit must be duly executed by the distributees of the estate.

(d) A transfer agent of a security shall change the registered ownership on the books of a corporation from the decedent to a claimant upon the presentation of an affidavit as provided in subsection (a).

(e) For the purposes of subsection (a), an insurance company that, by reason of the death of the decedent, becomes obligated to pay a death benefit to the estate of the decedent is considered a person indebted to the decedent.

(Formerly: Acts 1953, c.112, s.801; Acts 1965, c.379, s.2; Acts 1971, P.L.406, SEC.1; Acts 1975, P.L.288, SEC.12.) As amended by Acts 1977, P.L.2, SEC.80; Acts 1977, P.L.298, SEC.1; P.L.71-1991, SEC.15; P.L.77-1992, SEC.5; P.L.118-1997, SEC.16.

IC 29-3

ARTICLE 3. GUARDIANSHIPS AND PROTECTIVE PROCEEDINGS

IC 29-3-1

Chapter 1. Definitions

IC 29-3-1-1

Sec. 1. The definitions in this chapter apply throughout and their application is limited to this article.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-2

Sec. 2. "Claim" means, with respect to an incapacitated person or a minor, any liability of the incapacitated person or minor, whether arising in contract, tort, or otherwise, and any liability against an incapacitated person's or a minor's property that arises before, at, or after the appointment of a guardian, including expenses of administration.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.56.

IC 29-3-1-3

Sec. 3. "Court" means the court having probate jurisdiction and, where the context permits, the court having venue of the guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-4

(Repealed by P.L.264-1989, SEC.14.)

IC 29-3-1-5

Sec. 5. "Durable power of attorney" means a power of attorney that:

- (1) is executed by an incapacitated person before that person became an incapacitated person;
- (2) provides that the power survives the person's incompetence; and
- (3) is executed in accordance with the law in effect in the jurisdiction in which it was executed on the date it was executed.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.57.

IC 29-3-1-6

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Sec. 6. "Guardian" means a person who is a fiduciary and is appointed by a court to be a guardian or conservator responsible as the court may direct for the person or the property of an incapacitated person or a minor. The term includes a temporary guardian, a limited guardian, and a successor guardian but excludes one who is only a guardian ad litem. The terms guardian and conservator are interchangeable.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.58.

IC 29-3-1-7

Sec. 7. "Guardianship property" means the property of an incapacitated person or a minor for which a guardian is responsible.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.59.

IC 29-3-1-7.5

Sec. 7.5. "Incapacitated person" means an individual who:

- (1) cannot be located upon reasonable inquiry;
- (2) is unable:
 - (A) to manage in whole or in part the individual's property;
 - (B) to provide self-care; or
 - (C) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

- (3) has a developmental disability (as defined in IC 12-7-2-61).

As added by P.L.33-1989, SEC.60. Amended by P.L.2-1992, SEC.790.

IC 29-3-1-8

(Repealed by P.L.264-1989, SEC.14.)

IC 29-3-1-9

Sec. 9. "Letters" means letters of guardianship.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-10

Sec. 10. "Minor" means an individual who is less than eighteen (18) years of age and who is not an emancipated minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.2.

IC 29-3-1-11

Sec. 11. "Parent" means a biological or adoptive parent. The term does not include a stepparent, foster parent, or grandparent.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-12

Sec. 12. "Person" means an individual, an organization, an association, a nonprofit corporation, a corporation for profit, a limited liability company, a partnership, a financial institution, a trust, the division of family and children or other governmental entity, or other legal entity.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.791; P.L.8-1993, SEC.461.

IC 29-3-1-13

Sec. 13. "Protected person" means an individual for whom a guardian has been appointed or with respect to whom a protective order has been issued.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-14

Sec. 14. "Protective proceeding" means a proceeding for a protective order under IC 29-3-4.

As added by P.L.169-1988, SEC.1.

IC 29-3-1-15

Sec. 15. "Support" means care, maintenance, and education or training, if appropriate.

As added by P.L.169-1988, SEC.1.

IC 29-3-2**Chapter 2. General Provisions****IC 29-3-2-1****Application of article; jurisdiction of courts**

Sec. 1. (a) This article applies to the following:

(1) The business affairs, physical person, and property of every incapacitated person and minor residing in Indiana.

(2) Property located in Indiana of every incapacitated person and minor residing outside Indiana.

(3) Property of every incapacitated person or minor, regardless of where the property is located, coming into the control of a fiduciary who is subject to the laws of Indiana.

(b) Except as provided in subsections (c) through (e), the court has exclusive original jurisdiction over all matters concerning the following:

(1) Guardians.

(2) Protective proceedings under IC 29-3-4.

(c) A juvenile court has exclusive original jurisdiction over matters relating to the following:

(1) Minors described in IC 31-30-1-1.

(2) Matters related to guardians of the person and guardianships of the person described in IC 31-30-1-1(10).

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

(1) IC 31-14-10;

(2) IC 31-17-2-1; or

(3) IC 31-17-3-3;

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-5.1-2 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.61; P.L.1-1990, SEC.275; P.L.2-1992, SEC.792; P.L.16-1995, SEC.5; P.L.1-1997, SEC.118; P.L.217-2001, SEC.1.

IC 29-3-2-2

Sec. 2. (a) The venue for the appointment of a guardian or for protective proceedings is as follows:

(1) If the alleged incapacitated person or minor resides in Indiana, venue is:

(A) in the county where the alleged incapacitated person or minor resides; or

(B) if the proceeding is for the appointment of a temporary guardian of the person for an alleged incapacitated person or minor who is in need of medical care, in the county where a facility is located that is providing or attempting to provide medical care to the alleged incapacitated person or minor.

(2) If the alleged incapacitated person or minor does not reside in Indiana, then venue is in any county where any property of the alleged incapacitated person or minor is located. However, if the proceeding is for the appointment of a temporary guardian of the

person for an alleged incapacitated person or minor who is in need of medical care, venue is in the county where the facility providing or attempting to provide medical care is located.

(b) If proceedings are commenced in more than one (1) county, they shall be stayed except in the county where first commenced until final determination of the proper venue by the court in the county where first commenced. After proper venue has been determined, all proceedings in any county other than the county where jurisdiction has been finally determined to exist shall be dismissed. If the proper venue is finally determined to be in another county, the court shall transmit the original file to the proper county. The proceedings shall be commenced by the filing of a petition with the court, and the proceeding first commenced extends to all of the property of the minor or the incapacitated person unless otherwise ordered by the court.

(c) If it appears to the court at any time that:

- (1) the proceeding was commenced in the wrong county;
- (2) the residence of the incapacitated person or the minor has been changed to another county;
- (3) the proper venue is determined to be otherwise under the Indiana Rules of Trial Procedure; or
- (4) it would be in the best interest of the incapacitated person or the minor and the property of the minor or the incapacitated person;

the court may order the proceeding, together with all papers, files, and a certified copy of all orders, transferred to another court in Indiana. That court shall complete the proceeding as if originally commenced in that court. The court may in like manner transfer a guardianship or protective proceeding in Indiana to a court outside Indiana if the other court assumes jurisdiction to complete the proceeding as if originally commenced in that court. Before any transfer is made under this subsection, a hearing pursuant to notice shall be held in the same manner as provided with respect to the appointment of a guardian.

(d) Where a guardian has been appointed by a court that does not have probate jurisdiction, the matter shall be transferred in accordance with the proper venue to a court having probate jurisdiction for qualification of the guardian and for further proceedings in the guardianship.

(e) Nothing in this section shall be construed as a requirement of jurisdiction.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.62.

IC 29-3-2-3

Sec. 3. (a) Unless waived under subsection (b) or if section 4 of this chapter does not apply, the court shall appoint a guardian ad litem to represent the interests of the alleged incapacitated person or minor if the court determines that the alleged incapacitated person or minor is not represented or is not adequately represented by counsel. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The court as part of the record of the proceeding shall set out its reasons for appointing a guardian ad litem.

(b) If a minor has or is entitled to property for the preservation of which the appointment of a guardian is necessary, and the court makes written findings that:

- (1) the proposed guardian is capable of representing and managing the minor's property;
 - (2) no other petition for the appointment of a guardian has been filed; and
 - (3) the petition for the appointment of the proposed guardian is uncontested;
- the court may waive the appointment of a guardian ad litem for the minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.63; P.L.154-1990, SEC.12; P.L.118-1997, SEC.25.

IC 29-3-2-4

Sec. 4. (a) All findings, orders, or other proceedings under this article shall be in the discretion of the court unless otherwise provided in this article.

(b) If there is not a conflict of interest between a guardian of an estate and the protected person or among persons represented, orders binding a guardian of an estate bind the protected person.

(c) Orders binding a guardian of the person bind the ward if a guardian of the ward's estate has not been appointed.

As added by P.L.169-1988, SEC.1. Amended by P.L.118-1997, SEC.26; P.L.252-2001, SEC.25.

IC 29-3-3

Chapter 3. Proceedings in Lieu of Guardianships

IC 29-3-3-2

Property of incapacitated person not in excess of \$10,000; deposit, delivery, and disposition of property; compensation and expenses of receiver

Sec. 2. When the entire property of an incapacitated person does not exceed the value of ten thousand dollars (\$10,000), the court may, without the appointment of a guardian, giving of bond, or other order of court, authorize:

- (1) the deposit of the property in a depository authorized to receive fiduciary funds in the name of a suitable person designated by the court; or
- (2) if the property does not consist of money, the delivery of the property to a suitable person designated by the court.

The person receiving the property shall hold and dispose of the property in the manner the court directs and is entitled to reasonable compensation and to reimbursement for reasonable expenses incurred in good faith on behalf of the incapacitated person and approved by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.5; P.L.252-2001, SEC.27

IC 29-3-3-3a

Note: This version of section effective until 1-1-2003. See also following version of this section, effective 1-1-2003.

Sec. 3. Except as otherwise determined in a dissolution of marriage proceeding a custody proceeding, or in some other proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married, the parents of the minor jointly (or the survivor if one (1) parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor:

- (1) Consent to the application of subsection (c) of Section 2032A of the Internal Revenue Code, which imposes personal liability for payment of the tax under that Section.
- (2) Consent to the application of Section 6324A of the Internal Revenue Code, which attaches a lien to property to secure payment of taxes deferred under Section 6166 of the Internal Revenue Code.
- (3) Any other consents, waivers, or powers of attorney provided for under the Internal Revenue Code.
- (4) Waivers of notice permissible with reference to proceedings under IC 29-1.
- (5) Consents, waivers of notice, or powers of attorney under any statute, including the Indiana inheritance tax law (IC 6-4.1), the Indiana gross income tax law (IC 6-2.1), and the Indiana adjusted gross income tax law (IC 6-3).
- (6) Consent to unsupervised administration as provided in IC 29-1-7.5.
- (7) Federal and state income tax returns.
- (8) Consent to medical or other professional care, treatment, or advice for the minor's health and welfare.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.64; P.L.155-1990, SEC.1.

IC 29-3-3-3b

Note: This version of section effective 1-1-2003. See also preceding version of this section, effective until 1-1-2003.

Sec. 3. Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or in some other proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married, the parents of the minor jointly (or the survivor if one (1) parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor:

- (1) Consent to the application of subsection (c) of Section 2032A of the Internal Revenue Code, which imposes personal liability for payment of the tax under that Section.
- (2) Consent to the application of Section 6324A of the Internal Revenue Code, which attaches a lien to property to secure payment of taxes deferred under Section 6166 of the Internal Revenue Code.
- (3) Any other consents, waivers, or powers of attorney provided for under the Internal Revenue Code.
- (4) Waivers of notice permissible with reference to proceedings under IC 29-1.
- (5) Consents, waivers of notice, or powers of attorney under any statute, including the Indiana inheritance tax law (IC 6-4.1) and the Indiana adjusted gross income tax law (IC 6-3).
- (6) Consent to unsupervised administration as provided in IC 29-1-7.5.
- (7) Federal and state income tax returns.
- (8) Consent to medical or other professional care, treatment, or advice for the minor's health and welfare.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.64; P.L.155-1990, SEC.1; P.L.192-2002(ss), SEC.171.

IC 29-3-3-3.5

Sec. 3.5. (a) Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or another proceeding authorized by law, including a proceeding under section 6 of this chapter or another proceeding under this article, and unless a minor is married:

(1) the parents of the minor jointly or one (1) parent of the minor individually, if both parents are not incapacitated persons;

(2) one (1) parent, if one (1) of the parents is an incapacitated person; or

(3) the survivor, if one (1) parent is deceased and if the survivor is not an incapacitated person;

have the right, without the appointment of a guardian, giving of bond, or order or confirmation of court, to act as custodians of an individual retirement account established for the minor under 26 U.S.C. 408.

(b) IC 30-2-8.5-27(b), IC 30-2-8.5-27(e), and IC 30-2-8.5-28 apply to this section.

As added by P.L.264-1995, SEC.1.

IC 29-3-3-4

Sec. 4. (a) If:

(1) a guardian has not been appointed for an incapacitated person or minor;

(2) an emergency exists;

(3) the welfare of the incapacitated person or minor requires immediate action; and

(4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a

specified period not to exceed sixty (60) days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If the court finds that a previously appointed guardian is not effectively performing fiduciary duties and that the welfare of the protected person requires immediate action, the court may suspend the authority of the previously appointed guardian and appoint a temporary guardian for the protected person for any period fixed by the court. The authority of the previously appointed guardian is suspended as long as a temporary guardian appointed under this subsection has authority to act.

(c) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court. The court shall order only the powers that are necessary to prevent immediate and substantial injury or loss to the person or property of the alleged incapacitated person or minor in an appointment made under this section.

(d) Proceedings under this section are not subject to the provisions of IC 29-3-4.

(e) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.65; P.L.154-1990, SEC.13.

IC 29-3-3-5

Sec. 5. The chief of social services (or a person designated by the chief of social services) at any institution under the control of the division of mental health or the division of disability, aging, and rehabilitative services may execute the necessary documents to make applications on behalf of a patient in the institution to receive public assistance or to transfer the patient to an alternate care facility without the appointment of a guardian or other order of court.

As added by P.L.169-1988, SEC.1. Amended by P.L.2-1992, SEC.793; P.L.1-1993, SEC.214; P.L.40-1994, SEC.74.

IC 29-3-3-6

Sec. 6. (a) The surviving parent of a minor does not have the right to custody of the minor without a proceeding authorized by law if the parent was not granted custody of the minor in a dissolution of marriage decree and the conditions specified in this section exist.

(b) If:

(1) the surviving parent, at the time of the custodial parent's death, had required supervision during visiting privileges granted under a dissolution of marriage decree involving the minor; or

(2) the surviving parent's visiting privileges with the minor had been suspended at the time of the death of the custodial parent;

the court on petition by any person, including a temporary custodian named under IC 31-17-2-11 (or IC 31-

1-11.5-27 before its repeal), or on the court's own motion, may appoint a temporary guardian for the minor for a specified period not to exceed sixty (60) days.

(c) If a petition is filed under this section, a court shall appoint a guardian ad litem (as defined in IC 31-9-2-51) or a court appointed special advocate (as defined in IC 31-9-2-29) for the child. A guardian ad litem or court appointed special advocate appointed under this section serves until removed by the court.

(d) If a temporary guardian is appointed without notice and the minor files a petition that the guardianship be terminated or the court order modified, the court shall hold a hearing and make a determination on the petition at the earliest possible time.

(e) A temporary guardian appointed under this section has only the responsibilities and powers that are ordered by the court.

(f) A proceeding under this section may be joined with a proceeding under IC 29-3-4 or IC 29-3-5.

(g) The court shall appoint a guardian under this article if the court finds that the surviving parent is not entitled to the right of custody of the minor.

As added by P.L.155-1990, SEC.2. Amended by P.L.1-1993, SEC.215; P.L.1-1997, SEC.119.

IC 29-3-4

Chapter 4. Protective Proceedings and Single Transactions

IC 29-3-4-1

Sec. 1. (a) Upon petition by any person and after hearing, the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person or is a minor under IC 29-3-5.

(b) Notice of the filing of a petition under this chapter for the issuance of a protective order and the hearing on the petition shall be given under IC 29-3-6.

(c) Incapacitated persons and minors have the same rights at the hearing on a petition filed under this chapter for the issuance of a protective order as they would have at a hearing for the appointment of a guardian.

(d) The court may issue a protective order concerning an incapacitated person if the court finds that:

(1) the incapacitated person:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the incapacitated person;

(2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and

(3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

(e) The court may issue a protective order concerning a minor if the court finds that:

(1) the minor:

(A) owns property or has income requiring management or protection that cannot otherwise be provided;

(B) has or may have financial or business affairs that may be jeopardized or impaired; or

(C) has property that needs to be managed to provide for the support or protection of the minor; and

(2) the protection sought is necessary.

The court shall make the orders it considers proper and appropriate to protect the person, business affairs, and property of the minor.

(f) If the court finds grounds for a protective order under subsection (d) or (e), it may, without appointing a guardian, declare the person to be a protected person and authorize or ratify any transaction necessary or desirable to meet the needs of the protected person. Protective arrangements include the following:

(1) The payment, delivery, deposit, or retention of property.

(2) The sale, mortgage, lease, or other transfer of property.

(3) The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and educating a person.

(4) The addition to or establishment of a suitable trust.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.66.

IC 29-3-4-2

Sec. 2. The court may, without appointment of a guardian, by protective order authorize or ratify:

(1) any contract, trust, or other transaction relating to the property and financial or business affairs of the incapacitated person or minor if the court determines the transaction to be in the incapacitated person's or the minor's best interest; or

(2) if no guardian is acting for an incapacitated person, the exercise of any power on the incapacitated person's behalf that is the same as that given to the parent of a minor under IC 29-3-3-3.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.67.

IC 29-3-4-3

Sec. 3. Before issuing a protective order under this chapter, the court shall consider the interest of creditors and dependents of the protected person and, in view of the disability or minority of the protected person, whether the protected person needs the protection of a guardian. The court may appoint a limited guardian to assist in the establishment of any protective arrangement or other transaction. All persons acting under a protective order have the authority conferred by the order and serve until discharged by the court after reporting to the court all matters conducted under the order.

As added by P.L.169-1988, SEC.1.

IC 29-3-4-4

Sec. 4. If not otherwise compensated for services rendered, any guardian, attorney, physician, or other person whose services are provided in good faith and are beneficial to the protected person or the protected person's property is entitled to reasonable compensation and reimbursement for reasonable expenditures made on behalf of the protected person. These amounts may be paid from the property of the protected person as ordered by the court.

As added by P.L.169-1988, SEC.1.

IC 29-3-5**Chapter 5. Proceedings for Appointment of Guardian or to Procure a Protective Order****IC 29-3-5-1**

Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:

(1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed.

(2) The nature of the incapacity.

(3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.

(4) If a limited guardianship is sought, the particular limitations requested.

(5) Whether a guardian has been appointed or is acting for the incapacitated person or minor in any state.

(6) The residence and post office address of the proposed guardian and the proposed guardian's relationship to the alleged incapacitated person.

(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed.

(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed.

(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian is acting if the proposed guardian is an individual.

(10) The reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment.

(11) The name and business address of the attorney who is to represent the guardian.

(b) Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given under IC 29-3-6.

(c) After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition.

Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.

(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:

(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;

(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;

(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or

(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.

(e) A person alleged to be an incapacitated person may present evidence and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition. However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.68.

IC 29-3-5-2

Sec. 2. A guardian may not be appointed for an incapacitated person or a minor under this chapter until the incapacity or minority has been adjudicated.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.6.

IC 29-3-5-3

Sec. 3. (a) Except under subsection (c), if it is alleged and the court finds that:

(1) the individual for whom the guardian is sought is an incapacitated person or a minor; and

(2) the appointment of a guardian is necessary as a means of providing care and supervision of the physical person or property of the incapacitated person or minor;
the court shall appoint a guardian under this chapter.

(b) If it is alleged and the court finds that the welfare of an incapacitated person would be best served by limiting the scope of the guardianship, the court shall make the appointive or other orders under this chapter to:

(1) encourage development of the incapacitated person's self-improvement, self-reliance, and independence; and

(2) contribute to the incapacitated person's living as normal a life as that person's condition and circumstances permit without psychological or physical harm to the incapacitated person.

(c) If the court finds that it is not in the best interests of the incapacitated person or minor to appoint a guardian, the court may:

(1) treat the petition as one for a protective order and proceed accordingly;

(2) enter any other appropriate order; or

(3) dismiss the proceedings.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.69.

IC 29-3-5-4

Sec. 4. The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:

(1) Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).

(2) Any request contained in a will or other written instrument.

(3) Any request made by a minor who is at least fourteen (14) years of age.

(4) Any request made by the spouse of the alleged incapacitated person.

- (5) The relationship of the proposed guardian to the individual for whom guardianship is sought.
- (6) Any person acting for the incapacitated person under a durable power of attorney.
- (7) The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.7; P.L.149-1991, SEC.3.

IC 29-3-5-5

Sec. 5. (a) The following are entitled to consideration for appointment as a guardian under section 4 of this chapter in the order listed:

- (1) A person designated in a durable power of attorney.
- (2) The spouse of an incapacitated person.
- (3) An adult child of an incapacitated person.
- (4) A parent of an incapacitated person, or a person nominated by will of a deceased parent of an incapacitated person or by any writing signed by a parent of an incapacitated person and attested to by at least two (2) witnesses.
- (5) Any person related to an incapacitated person by blood or marriage with whom the incapacitated person has resided for more than six (6) months before the filing of the petition.
- (6) A person nominated by the incapacitated person who is caring for or paying for the care of the incapacitated person.
- (b) With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person or minor, may pass over a person having priority and appoint a person having a lower priority or no priority under this section.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.70.

IC 29-3-5-6

Sec. 6. When a petition is filed for the appointment of a guardian for two (2) or more minors or incapacitated persons who are children of a common parent, parent and child, or husband and wife, a separate petition need not be filed for each minor or incapacitated person, and appointment of a guardian for all may be considered in one (1) proceeding. A separate accounting is required for each minor or incapacitated person, but an actual segregation of assets is not required except as required by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.71.

IC 29-3-6

Chapter 6. Notice of Hearings

IC 29-3-6-1

Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given as follows:

- (1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.
- (2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by IC 29-3-3-4(a).
- (3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:
 - (A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.
 - (B) Any living parent of the minor, unless parental rights have been terminated by a court order.
 - (C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.
 - (D) Any other person that the court directs.
- (4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:
 - (A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.
 - (B) Any person who is serving as a guardian for, or who has the care and custody of, the alleged incapacitated person.
 - (C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

(c) All notices required by this section shall be given in the manner prescribed by IC 29-1-1-12 through IC 29-1-1-14.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.8.

IC 29-3-6-2

Sec. 2. A copy of the petition shall be attached to the notice, and the notice must be in substantially the following form:

NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), Indiana, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed for (name of alleged incapacitated person or minor). A copy of the petition requesting appointment of a guardian is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person or minor) is an incapacitated person or minor under Indiana law. This proceeding may substantially affect the rights of (name of alleged incapacitated person or minor).

If the court finds that (name of alleged incapacitated person or minor) is an incapacitated person or minor, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person or minor). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person or minor) to retain control over certain property and activities. The court may also determine whether a protective order should be entered on behalf of (name of alleged incapacitated person or minor).

(Name of alleged incapacitated person) may attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not required. If (name of alleged incapacitated person) attends the hearing, opposes the petition, and is not represented by an attorney, the court may appoint an attorney to represent (name of alleged incapacitated person). The court may, where required, appoint a guardian ad litem to represent (name of alleged incapacitated person or minor) at the hearing.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

(signature of clerk of the court)

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.9; P.L.77-1992, SEC.6.

IC 29-3-6-3

Sec. 3. (a) At any time after the appointment of a guardian or the issuance of a protective order, any person may, in person or by the person's attorney, serve upon the guardian or the guardian's attorney, and file with the clerk of the court where the proceedings are pending, a written request together with a written admission or proof of service stating that the person desires written notice of all hearings and copies of all

pleadings or other papers in connection with:

- (1) the settlement of accounts;
- (2) the sale, mortgage, lease, or exchange of any property of the protected person;
- (3) allowances of any nature payable from the protected person's property;
- (4) the investment of funds of the protected person;
- (5) the removal, suspension, or discharge of the guardian;
- (6) the final termination of the guardianship; or
- (7) any other notice or matter as specified in the request.

The applicant requesting special notice must include in the written request the applicant's post office address or that of the applicant's attorney. The court may determine that any person requesting notice under this section has no interest in the proceeding, either generally or with respect to a particular matter, and is not entitled to the notice requested. Unless the court otherwise directs, upon filing the request, the guardian or the guardian's attorney shall comply with the request.

(b) Failure to comply with a request for notice under this section does not affect the validity of the proceeding.

As added by P.L.169-1988, SEC.1

IC 29-3-8

Chapter 8. Responsibilities and Powers of a Guardian

IC 29-3-8-1

Sec. 1. (a) The guardian of a minor (other than a temporary guardian) has all of the responsibilities and authority of a parent and, unless otherwise ordered by the court, is responsible for the preservation of all the minor's property regardless of where the property is located. In addition and without limitation, the guardian:

- (1) must be or shall become sufficiently acquainted with the minor and maintain sufficient contact with the minor to know of the minor's capabilities, disabilities, limitations, needs, opportunities, and physical and mental health;
- (2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12;
- (3) to the extent the available parental income and property are insufficient to fulfill the parental obligation of support to the minor, shall apply the guardianship income and, to the extent the guardianship income is insufficient, the principal of the guardianship property to the minor's current needs for support, and protect and conserve that portion of the minor's property that is in excess of the minor's current needs;
- (4) shall report the physical and mental condition of the minor to the court as ordered by the court; and
- (5) has any other responsibilities that the court may order.

(b) The guardian (other than a temporary guardian) of an incapacitated person is responsible for the incapacitated person's care and custody and for the preservation of the incapacitated person's property to the extent ordered by the court. In addition and without limitation, the guardian of an incapacitated person:

- (1) has, with respect to the incapacitated person, the same responsibilities as those of a guardian of a minor enumerated in subsection (a)(1), (a)(3), and (a)(4);
- (2) shall, upon termination of the guardianship, comply with the applicable provisions of IC 29-3-12; and
- (3) has any other responsibilities that the court may order.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.10.

IC 29-3-8-2

Sec. 2. (a) The guardian of a minor may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) The power to receive property payable to the minor or the minor's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or private contract, devise, trust, or custodianship.
- (2) The power to take custody of the person of the minor and establish the minor's place of abode within or without Indiana if in accordance with IC 29-3-9-2.
- (3) The power to institute proceedings or take other appropriate action to compel the performance by any person of a duty to support the minor or to pay for the minor's education, health, or welfare.
- (4) The power to consent to medical or other professional care and treatment for the minor's health and welfare.

- (5) The power to consent to the marriage or adoption of the minor.
 - (6) If reasonable, the power to delegate to the minor certain responsibilities for decisions affecting the minor's business affairs and well-being.
 - (7) The power to purchase a home for the minor or the minor's dependents, to protect the minor's existing home, or to protect the minor's interest in any real estate in which the minor may have an interest, contractual or otherwise, or to purchase any other interest in real property where the court finds the purchase to be in the minor's best interest.
 - (8) The powers with respect to the guardianship property as are granted to a guardian under section 4 of this chapter with respect to guardianship property.
 - (9) The power to bind all or any part of the guardianship property in a transaction for the benefit of the minor unless the third party dealing with the guardian is acting in bad faith.
 - (10) If the minor has no living parent, other than a parent who is an incapacitated person, the powers granted to the parent of a minor under IC 29-3-3-3(1) through IC 29-3-3-3(8).
 - (b) The guardian (other than a temporary guardian) of an incapacitated person has all of the powers to perform the guardian's responsibilities, including the powers with respect to the incapacitated person and the incapacitated person's property regardless of where the property is located, that are granted to the guardian of a minor enumerated in subsection (a)(1) through (a)(9).
- As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.11.*

IC 29-3-8-3

Sec. 3. A guardian (other than a temporary guardian) shall do the following:

- (1) Act as a guardian with respect to the guardianship property and observe the standards of care and conduct applicable to trustees.
- (2) Protect and preserve the property of the protected person subject to guardianship and secure the protective orders or other orders that are required to protect any other property of the protected person.
- (3) Conserve any property of the protected person in excess of the protected person's current needs.
- (4) Encourage self-reliance and independence of the protected person.
- (5) Consider recommendations relating to the appropriate standard of support, care, education, and training for the protected person or the protected person's dependent made by the protected person's parent.

As added by P.L.169-1988, SEC.1. Amended by P.L.108-1996, SEC.6.

IC 29-3-8-4

Sec. 4. A guardian (other than a temporary guardian) may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- (1) To receive and issue a receipt for property payable to the protected person or the protected person's parent, guardian, or custodian from any source, including any statutory benefit, insurance system, or any private contract, devise, trust, guardianship, or custodianship.
- (2) If reasonable, to delegate to the protected person certain responsibilities for decisions affecting the protected person's business affairs and well-being.
- (3) To invest and reinvest the property of the protected person in accordance with powers vested in, and according to the standards imposed upon, trustees under IC 30-4-3-3(c).
- (4) To secure the appointment of a guardian or co-guardian in any other state, when needed, with respect to any part or all of the guardianship property located in another state, to confer upon the appointed guardian any or all of the guardian's powers as guardian with respect to the property.
- (5) To continue any business of the protected person, whether in corporate, partnership, or proprietorship form, according to the rules for continuing the business of a decedent specified in IC 29-1-13-11.
- (6) To pay to the person, guardian, department, bureau, or agency having care and custody of the protected person, or to the protected person if at least fourteen (14) years of age, a reasonable amount to be expended for the support of the protected person and the protected person's dependents, with due regard to the following:
 - (A) The size of the guardianship property, the probable duration of the guardianship, and the extent to which the protected person in the future may be self-sufficient and able to manage the protected person's financial affairs and property.
 - (B) The accustomed standard of living of the protected person and the protected person's dependents.
 - (C) Other funds or sources used for the support of the protected person and the protected person's dependents.
- (7) To distribute income and discretionary amounts of principal in one (1) or more of the following ways as the guardian believes to be in the best interests of the protected person:

- (A) Directly to the protected person.
- (B) To a guardian of the protected person appointed in another state.
- (C) To a custodian for the protected person under IC 30-2-8.5.
- (D) To an adult relative of the protected person.
- (E) By expending the money or using the property directly for the benefit of the protected person.
- (8) To apply the guardianship property to or for the benefit of any person, including the protected person, in reimbursement for reasonable expenditures made in good faith on behalf of the protected person that the guardian might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect that the services will be performed and advance payments are reasonably necessary under the circumstances.
- (9) To bind all or any part of the guardianship property in a transaction for the benefit of the protected person, unless the third party dealing with the guardian is acting in bad faith.
- (10) Except as provided in IC 29-3-2-6(d), powers conferred upon trustees and personal representatives respectively by IC 30-4-3-3 and IC 29-1-7.5-3. However, if there is a conflict, the broader power controls.
- (11) To exercise on behalf of the protected person powers that are the same as those granted to the parent of a minor under IC 29-3-3-3.

As added by P.L.169-1988, SEC.1. Amended by P.L.267-1989, SEC.1; P.L.77-1992, SEC.7.

IC 29-3-8-5

Sec. 5. (a) Any:

- (1) sale or encumbrance of any part of the property of a protected person to a guardian or guardian's spouse, agent, attorney, or any corporation, trust, or other organization in which the guardian has a substantial beneficial interest; or
 - (2) other transaction involving the property that is affected by a substantial conflict between the interest of the protected person and the guardian's personal interest;
- is void.

(b) Every contract, sale, or conveyance executed by a protected person is void unless the protected person is a minor, in which event the contract, sale, or conveyance is voidable.

As added by P.L.169-1988, SEC.1.

IC 29-3-8-6

Sec. 6. If:

- (1) a guardian sells or transfers during a protected person's lifetime property belonging to the protected person that is specifically devised to another in a will executed by the protected person;
 - (2) the protected person subsequently dies; and
 - (3) the devised property is consequently not contained in the protected person's estate following the death of the protected person;
- the devisee may, at the devisee's option, elect to receive the value of the devised property, as valued at the time of death of the protected person, as a general devise or the proceeds of the sale or transfer as a specific devise.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.72; P.L.252-2001, SEC.28.

IC 29-3-8-6.5

Sec. 6.5. (a) If:

- (1) a guardian takes possession of property that is jointly owned by or titled in the names of the protected person and another person with rights of survivorship;
 - (2) the guardian severs the joint ownership of the property; and
 - (3) the protected person subsequently dies while the other person is living;
- the other person may elect to receive from the protected person's estate property in an amount determined under subsection (b).

(b) The amount of property the other person described in subsection (a) may elect to receive is determined in STEP THREE of the following formula:

STEP ONE: Subtract:

- (A) the value of the severed property retained by the other person at the time ownership was severed, if any; from
- (B) the value of the joint property at the time ownership was severed.

STEP TWO: Divide:

- (A) the remainder determined under STEP ONE; by

(B) the value of the protected person's property, including the jointly held property, at the time ownership was severed.

STEP THREE: Multiply:

(A) the quotient determined under STEP TWO; by

(B) the value of the deceased protected person's net estate.

As added by P.L.33-1989, SEC.73.

IC 29-3-8-7

Sec. 7. If the court finds that:

(1) an incapacitated person who is a protected person did, before the person became an incapacitated person, enter into a written contract, including a contract for the sale, division, or other disposition of property;

(2) the obligations of the contract have not been fully carried out; and

(3) the contract was a good and binding contract at the time of the making of the contract;

the court shall authorize the guardian of the protected person to perform the contract without notice or hearing unless otherwise ordered by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.74.

IC 29-3-8-8

Sec. 8. (a) The court, at the time of appointment or later, on its own motion or on petition of the protected person or other person approved by the court, may:

(1) confer upon the guardian any additional responsibilities and powers;

(2) increase or decrease the bond of the guardian to satisfy the requirements of IC 29-3-7-1; or

(3) limit the responsibilities and powers of the guardian otherwise conferred by this article and create a limited guardianship.

(b) However, all limitations must be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate revised letters issued.

As added by P.L.169-1988, SEC.1.

IC 29-3-9

Chapter 9. Matters Other Than Appointment

IC 29-3-9-1

Sec. 1. (a) By a properly executed power of attorney, a parent or a guardian (other than a temporary guardian) of an incapacitated person or minor, may delegate to another person for:

(1) any period during which the care and custody of the protected person is entrusted to an institution furnishing care, custody, education, training; or

(2) a period not exceeding sixty (60) days during which the parent or guardian is physically incapacitated or absent from the parent's or guardian's residence;

any powers regarding support, custody, or property of the protected person, except the power to consent to the marriage or adoption of a protected person who is a minor.

(b) A person having a power of attorney executed under subsection (a) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the support, custody, or property of the protected person except any authority expressly excluded in the written instrument delegating the power. However, the parent or guardian remains responsible for any act or omission of the person having the power of attorney with respect to the affairs, property, and person of the protected person as though the power of attorney had never been executed.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.75.

IC 29-3-9-2

Sec. 2. A guardian (other than a temporary guardian) may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place in Indiana or to another state if the court finds that such a change is in the best interests of the protected person. Upon such a change, the guardianship may be limited or terminated by the court.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-4

Sec. 4. (a) Upon petition of the guardian (other than a temporary guardian) or any other person as approved by the court, and after notice to such persons as the court may direct, the court may, after hearing and by

order, authorize the guardian to apply or dispose of the principal or income of the estate of the protected person that the court determines to be in excess of that likely to be required for the protected person's future support or for the future support of the protected person's dependents during the lifetime of the protected person, in order to carry out the estate planning that the court determines to be appropriate for the purposes of minimizing current and prospective income, estate, or other taxes. The court may accordingly authorize the guardian to make gifts, outright or in trust, on behalf of the protected person to or for the benefit of the prospective legatees, devisees, or heirs, including any person serving as the protected person's guardian, or to other individuals or charities, to whom or in which it is shown that the protected person had an interest. In addition, the court may also authorize the guardian to:

- (1) apply or dispose of the excess principal or income for any other purpose the court decides is in the best interests of the protected person or the protected person's property, spouse, or family;
 - (2) exercise or waive the right of the protected person to renounce or disclaim any interest in whole or in part devolving by testate or intestate succession or by inter vivos transfer, including the right of the protected person to surrender the right to revoke a revocable trust; or
 - (3) exercise or release any power of appointment that is vested in the protected person.
- (b) In a hearing upon a petition filed under subsection (a), the court shall determine whether the planned disposition, renunciation, disclaimer, release, or exercise is consistent with the apparent intention of the protected person, which determination shall be made on the basis of evidence as to the declarations, practices, or conduct of the protected person or, in the absence of that type of evidence, upon the court's determination as to what a reasonable and prudent person would do under the same or similar circumstances as are shown by the evidence presented to the court.
- (c) The guardian may examine the will of the protected person.

As added by P.L.169-1988, SEC.1.

IC 29-3-9-11

Sec. 11. The division of family and children or county office of family and children shall investigate and report to the court concerning the conditions and circumstances of a minor or an alleged incapacitated person or protected person and the fitness and conduct of the guardian or the proposed guardian whenever ordered to do so by the court.

As added by P.L.169-1988, SEC.1. Amended by P.L.33-1989, SEC.78; P.L.2-1992, SEC.794; P.L.4-1993, SEC.261; P.L.5-1993, SEC.274.

IC 29-3-12

Chapter 12. Termination of Guardianships and Protective Orders

IC 29-3-12-1

Sec. 1. (a) Unless the protected person has been adjudicated an incapacitated person, the court shall terminate the guardianship of a minor upon:

- (1) the minor's attaining eighteen (18) years of age; or
- (2) the minor's death.

The court may terminate the guardianship of a minor upon the minor's adoption or marriage.

(b) The court shall terminate the guardianship of an incapacitated person upon:

- (1) adjudication by the court that the protected person is no longer an incapacitated person; or
- (2) the death of the protected person.

(c) The court may terminate any guardianship if:

- (1) the guardianship property does not exceed the value of three thousand five hundred dollars (\$3,500);
- (2) the guardianship property is reduced to three thousand five hundred dollars (\$3,500);
- (3) the domicile or physical presence of the protected person is changed to another state and a guardian has been appointed for the protected person and the protected person's property in that state; or
- (4) the guardianship is no longer necessary for any other reason.

(d) When a guardianship terminates otherwise than by the death of the protected person, the powers of the guardian cease, except that the guardian may pay the claims and expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust, including payment and delivery of the remaining property for which the guardian is responsible to the protected person, or, in the case of an unmarried minor, to a person having care and custody of the minor with whom the minor resides, or another responsible person as the court orders.

(e) When a guardianship terminates by reason of the death of the protected person, the powers of the guardian cease, except that the guardian may pay the expenses of administration that are approved by the court and exercise other powers that are necessary to complete the performance of the guardian's trust and may deliver the remaining property for which the guardian is responsible to the protected person's personal representative or to a person who presents the guardian with an affidavit under IC 29-1-8-1 or IC 29-2-1-2.

If approved by the court, the guardian may pay directly the following:

- (1) Reasonable funeral and burial expenses of the protected person.
- (2) Reasonable expenses of the protected person's last illness.
- (3) The protected person's federal and state taxes.
- (4) Any statutory allowances payable to the protected person's surviving spouse or surviving children.
- (5) Any other obligations of the protected person.

As added by P.L.169-1988, SEC.1. Amended by P.L.264-1989, SEC.12.